



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,877	03/23/2001	Randall C. Arnold	AUGA15000005	7377

25548 7590 02/04/2003

TERRANCE A. MEADOR
GRAY CARY WARE & FREIDENRICH, LLP
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO, CA 92121-2133

EXAMINER

SCHOPFER, KENNETH G

ART UNIT PAPER NUMBER

3739

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,877

Applicant(s)

ARNOLD ET AL.

Examiner

Kenneth G Schopfer

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-71 is/are pending in the application.
- 4a) Of the above claim(s) 38,39,41-43,48-53,55,59,60,62-64,69 and 71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-37,40,44-47,54,56-58,61,65-68 and 70 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species XII in Paper No. 7 is acknowledged. The applicant has made arguments against the election requirement in paper number 9, this traversal is on the ground(s) that the device of figure 15 can use all of the different species of plugs in figures 1-14. This is not found persuasive because, while this argument is true, each separate plug used with the device of figure 15 constitutes a distinct species. Through the election of figure 15 it was understood that the applicant elected the plug shown in this figure. Also, claims 34 and 35 are generic to all the species.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Hunter (USPN 4930174).

4. Referring to claim 34, Hunter teaches all of the limitations of this claim. Hunter discloses an inflatable device having two inlets 25 each with a plug. The inflation of the device using only one inlet teaches a method for controlling the airflow in the device including the steps of providing a plug placed in and retained in an inlet port and introducing airflow into the device via another inlet port where the plug prevents egress of air.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 34-37, 40, 44-47, 54, 56-58, 61, 65-68, and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berke et al. (USPN 5304213).

7. Referring to claim 34, Berke et al. teach all of the limitations of this claim except for the plug. Berke et al. disclose an inflatable device having two inlets 73 and 74, each with a pull-seal label closing. The inflation of the device using only one inlet teaches a method for controlling airflow through the device having the steps of providing a closure for one inlet and introducing air into the other inlet where the closure prevents egress of air. McCord teaches a plug 30 for closing an inlet to a container. It would have been obvious to one of ordinary skill in the art at the time of invention to use a plug as in McCord in the device of Berke et al. as an effective means to prevent egress of air.

8. Referring to claims 35-37, 40, 44, 46, 54, 56-58, 61, 65, 67, and 70, Berke et al. teach all of the limitations of these claims except for the plug. Berke et al. teach an apparatus for warming a person including:

- a) an inflatable cover in a transverse disposition for warming the chest of a person (figure 7);
- b) two inlet ports, 73 and 74, each including a first sheet of flexible material, 75 and 76, attached to the cover and a hole adapted to receive the nozzle of an air hose; and

Art Unit: 3739

- c) pull-seal labels removably received over the inlets to close them.

McCord teaches a resilient plastic plug 30 for closing an inlet to a container. The plug includes a planar central body 34 and a pair of opposing, curved extensions, 42 and 44, that are coplanar with the central body and are receivable within the opening of a container (figure 8). It would have been obvious to one of ordinary skill in the art at the time of invention to include a plug as in McCord in the device of Berke et al. as an effective means to repeatedly close and open an inlet port of the device.

9. Referring to claims 45 and 66, the combined device of Berke et al. and McCord teaches all of the limitations of this claim as described above except for the plug being made of wood pulp material. It would have been obvious to one of ordinary skill in the art at the time of invention that the use of a wood pulp material for the plug as in the claims represents an unpatentable design choice over the plug of McCord that would not change the ability of the plug to effectively close an inlet port.

10. Referring to claims 47 and 68, the combined device of Berke et al. and McCord teaches all of the limitations of this claim as described above except for the plug having two pairs of opposing extensions. It would have been obvious to one of ordinary skill in the art at the time of invention to include another pair of opposing extensions on the plug of McCord in order to provide an even more secure closing means for the inlet port.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth G Schopfer whose telephone number is 703-305-2649. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

Art Unit: 3739

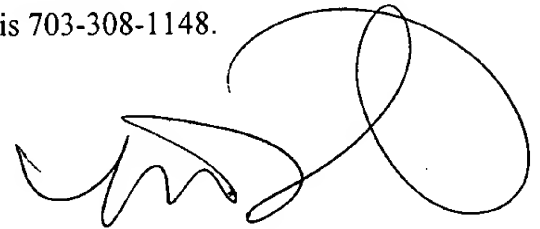
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

KS

KS

January 24, 2003

A handwritten signature in black ink, appearing to be 'Linda C. M. Dvorak', with a large, stylized loop at the end.

**LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700**